

THE HONORABLE MARSHA J. PECHMAN

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KENNETH I. DEANE,

Plaintiff,

vs.

PACIFIC FINANCIAL GROUP, Inc., a  
Washington corporation, MEGAN P. MEADE,  
an unmarried woman; NICOLAS B. SCALZO,  
a married man; NICOLAS B. SCALZO an  
unmarried man; JAMES C. MCCLENDON, a  
married man; JAMES C. MCCLENDON and  
JOAN A. MCCLENDON, a marital community;  
GAETAN T. SCALZO, a married man;  
GAETAN T. SCALZO and SHERRIE  
SCALZO, a marital community,

Defendants.

NO. 2:19-cv-00722-MJP

ORDER ON DEFENDANTS'  
UNOPPOSED MOTION TO AMEND  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

THIS MATTER having come before the Honorable Marsha J. Pechman for hearing upon the Defendants' Unopposed Motion to Amend Finding of Fact and Conclusions of Law, and after the Court having examined the records and files, and being fully advised in the premises; now therefore:

IT IS HEREBY ORDERED as follows:

1. Finding of Fact No. 12 is amended to read as follows:

12. The Employment Agreement also contained a provision that in the event Deane was terminated without cause or for "any other reason not listed under the termination for cause provision" of the Employment Agreement, Deane would continue to receive commissions at 10% for up to a four year period depending

on the length of his employment. The Employment Agreement then sets forth a methodology for Deane to receive any such commissions, the amount of which was based on the business he “procured” for TPFPG during this period of employment.

2. Conclusions of Law Nos. 8 and 11 are amended to read as follows:

8. This means the appropriate formula for calculation of Deane’s termination payment for SDBAs is: 10% of (.008 x [AUM for all accounts Deane’s territory at the time of his termination]). This was the formula the Parties used before the time of termination to calculate Deane’s commission for SDBAs. Ten percent (10%) is the amount contemplated under Section 10.2 of the Employment Agreement. The territories to be included to calculate the AUM are those that TPFPG used in making the partial payments to Deane of his termination payments, and do not reflect changes made to Deane’s territories in January 2019. Both the ordinary meaning of the word and the past practice of support the proposition that payments are to be made on all accounts in Deane’s territory at the time of termination of the Employment Agreement on January 22, 2019 regardless of whether another wholesaler was in the region.

11. Future payments shall be due monthly for SDBAs and quarterly for all other program lines.

3. The parties may file separate motions identified by FRAP (4)(a)(4)(A), namely FRCP 52(b), 59(e), and 60.

\\  
\\  
\\  
\\

DATED this 22 day of December, 2020.



HONORABLE MARSHA J. PECHMAN

Presented by:

GORDON REES SCULLY MANSUKHANI LLP

By: /s/ Nicole E. Demmon

David W. Silke, WSBA #23761

Nicole E. Demmon, WSBA #45322

Michael C. Tracy, WSBA #51226

Gordon Rees Scully Mansukhani, LLP

701 Fifth Avenue, Suite 2100

Seattle, WA 98104

Phone: (206) 695-5100

E-Mails: [dsilke@grsm.com](mailto:dsilke@grsm.com)

[ndemmon@grsm.com](mailto:ndemmon@grsm.com)

[mtracy@grsm.com](mailto:mtracy@grsm.com)

Attorneys for Defendants:

Pacific Financial Group, Inc.; Megan P. Meade;

Nicholas B. Scalzo;

James C. McClendon and Joan A. McClendon;

and Gaetan T. Scalzo and Sherrie Scalzo